



State of Wisconsin  
2013 - 2014 LEGISLATURE



RM  
run  
p2

LRB-0226/P1  
RNK:kjf:jm

Today

DOA:.....Stinebrink, BB0098 - Commercial construction site erosion control

**FOR 2013-2015 BUDGET — NOT READY FOR INTRODUCTION**

D-Note

Don't Gen

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**ENVIRONMENT**

**WATER QUALITY**

Under current law both DSPS and DNR administer laws with regard to erosion control at building sites. DSPS is required to establish standards for erosion control at building sites for the construction of public buildings and buildings that are places of employment (commercial buildings) as well as for the construction of one-family and two-family dwellings. DNR is required to establish standards for erosion control at sites where the construction activities do not include the construction of a building ~~on building sites~~, such as sites involving street or bridge construction.

Under current law, DSPS may delegate authority with regard to erosion control at building sites for the construction of commercial buildings to a county, city, village, or town. Current law requires DNR to prepare a model zoning ordinance for erosion control at nonbuilding sites and to distribute the model ordinance to any city, village, town, or county that submits a request.

This bill eliminates DSPS's authority to establish standards and administer the laws with regard to erosion control at commercial building sites. The bill ~~gives~~ DNR the responsibility to establish standards and to administer the laws with regard to erosion control at all construction sites, other than sites for the construction of one-family and two-family dwellings.

INS.  
ANALYSIS

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**SECTION 1.** 30.443 (1) (a) of the statutes is amended to read:

30.443 (1) (a) Promulgate rules establishing standards for erosion prevention or control at sites in the riverway that are not subject to the standards established under s. ~~101.1206 (1)~~ or 101.653 (2) and that have a natural slope of 20% or less.

**SECTION 2.** 30.443 (1) (b) of the statutes is amended to read:

30.443 (1) (b) Promulgate rules establishing standards for erosion prevention or control that are in addition to standards established under ss. ~~101.1206 (1)~~ and s. 101.653 (2) for sites in the riverway that are subject to those standards and that have a natural slope of 12% or more but 20% or less.

**SECTION 3.** 30.443 (2) of the statutes is amended to read:

30.443 (2) The board may impose any of the applicable standards established under sub. (1) (a) or (b) or ss. ~~101.1206 (1)~~ or s. 101.653 (2) as a condition for receiving a permit under s. 30.44 (1), and the board may promulgate rules to enforce these standards in the riverway.

**SECTION 4.** 59.69 (4c) of the statutes is repealed.

**SECTION 5.** 59.693 (2) of the statutes is amended to read:

59.693 (2) AUTHORITY TO ENACT ORDINANCE. To effect the purposes of s. 281.33 and to promote the public health, safety and general welfare, a county may enact a zoning ordinance, that is applicable to all of its unincorporated area, except as provided in s. 60.627 (2) (b), for construction site erosion control <sup>no strike</sup> at sites where the construction activities do not include the construction of a building and for storm

described in s. 281.33(3)(a) f. a. and b.

described in s. 281.33 (3)(a) 1. a. and b.

1 water management. This ordinance may be enacted separately from ordinances  
2 enacted under s. 59.69.

3 **SECTION 6.** 59.693 (7) of the statutes is amended to read:

4 59.693 (7) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted  
5 to a county under s. 236.45 may be exercised by the county with respect to  
6 construction site erosion control <sup>no strike</sup> ~~at sites where the construction activities do not~~  
7 ~~include the construction of a building~~ or with respect to storm water management  
8 regulation, if the county has or provides a county planning agency as defined in s.  
9 236.02 (1).

10 **SECTION 7.** 60.627 (2) (a) of the statutes is amended to read:

11 60.627 (2) (a) To effect the purposes of s. 281.33 and to promote the public  
12 health, safety and general welfare, if a town board may enact zoning ordinances  
13 under s. 60.62, the town board may enact a zoning ordinance, that is applicable to  
14 all of its area, for construction site erosion control <sup>no strike</sup> ~~at sites where the construction~~  
15 ~~activities do not include the construction of a building~~ and for storm water  
16 management. This ordinance may be enacted separately from ordinances enacted  
17 under s. 60.62.

18 **SECTION 8.** 60.627 (4) (c) of the statutes is amended to read:

19 60.627 (4) (c) An ordinance enacted under this section supersedes all provisions  
20 of an ordinance enacted under s. 60.62 that relate to construction site erosion control  
21 <sup>no strike</sup> ~~at sites where the construction activities do not include the construction of a building~~  
22 or to storm water management regulation.

23 **SECTION 9.** 60.627 (6) of the statutes is amended to read:

24 60.627 (6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted  
25 to a town under s. 236.45 may be exercised by it with respect to construction site

described in s. 281.33(3)(a)1. a. and b.

no strike  
erosion control at sites where the construction activities do not include the construction of a building or with respect to storm water management regulation, if the town has or provides a planning commission or agency.

SECTION 10. 61.354 (2) of the statutes is amended to read:

61.354 (2) AUTHORITY TO ENACT ORDINANCE. To effect the purposes of s. 281.33 and to promote the public health, safety and general welfare, a village may enact a zoning ordinance, that is applicable to all of its incorporated area, for construction site erosion control at sites where the construction activities do not include the construction of a building and for storm water management. This ordinance may be enacted separately from ordinances enacted under s. 61.35.

SECTION 11. 61.354 (4) (c) of the statutes is amended to read:

61.354 (4) (c) An ordinance enacted under this section supersedes all provisions of an ordinance enacted under s. 61.35 that relate to construction site erosion control at sites where the construction activities do not include the construction of a building or to storm water management regulation.

SECTION 12. 61.354 (6) of the statutes is amended to read:

61.354 (6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted to a village under s. 236.45 may be exercised by it with respect to construction site erosion control at sites where the construction activities do not include the construction of a building or with respect to storm water management regulation, if the village has or provides a planning commission or agency.

SECTION 13. 62.234 (2) of the statutes is amended to read:

62.234 (2) AUTHORITY TO ENACT ORDINANCE. To effect the purposes of s. 281.33 and to promote the public health, safety and general welfare, a city may enact a zoning ordinance, that is applicable to all of its incorporated area, for construction

described in s. 281.33(3)(a) 1. a. and b.

1 site erosion control <sup>no strike</sup> ~~at sites~~ where the construction activities do not include the  
2 ~~construction of a building~~ and for storm water management. This ordinance may be  
3 enacted separately from ordinances enacted under s. 62.23.

4 SECTION 14. 62.234 (4) (c) of the statutes is amended to read:

5 62.234 (4) (c) An ordinance enacted under this section supersedes all provisions  
6 of an ordinance enacted under s. 62.23 that relate to construction site erosion control  
7 <sup>no strike</sup> ~~at sites~~ where the construction activities do not include the construction of a building  
8 or to storm water management regulation.

9 SECTION 15. 62.234 (6) of the statutes is amended to read:

10 62.234 (6) APPLICABILITY OF LOCAL SUBDIVISION REGULATION. All powers granted  
11 to a city under s. 236.45 may be exercised by it with respect to construction site  
12 erosion control <sup>no strike</sup> ~~at sites~~ where the construction activities do not include the  
13 ~~construction of a building~~ or with respect to storm water management regulation, if  
14 the city has or provides a planning commission or agency.

15 SECTION 16. 92.07 (15) of the statutes is amended to read:

16 92.07 (15) ADMINISTRATION AND ENFORCEMENT OF ORDINANCES. A land  
17 conservation committee may, if authorized by the county board, administer and  
18 enforce those provisions of an ordinance enacted under s. 101.65 (1) (a) related to  
19 construction site erosion, or a zoning ordinance enacted under s. 59.693 or an  
20 ordinance enacted under authority granted under s. 101.1206.

21 SECTION 17. 101.653 (2m) of the statutes is amended to read:

22 101.653 (2m) RULES FOR ADMINISTRATION. The department shall promulgate  
23 rules for the administration of construction site erosion control under this  
24 subchapter by counties, cities, villages and towns, including provisions regarding the  
25 issuance of building permits and the collection and distribution of fees.

INS.  
5-20

1 **SECTION 18.** 281.33 (3) (a) 1. of the statutes is amended to read:

2 281.33 (3) (a) 1. Except as restricted under subd. 2., the department shall  
3 establish by rule minimum standards for activities related to construction site  
4 erosion control ~~at sites where the construction activities do not include the~~  
5 ~~construction of a building~~ and to storm water management.

6 **SECTION 19.** 281.33 (3) (b) (intro.) of the statutes is amended to read:

7 281.33 (3) (b) (intro.) The minimum standards for construction site erosion  
8 control ~~at sites where the construction activities do not include the construction of~~  
9 ~~a building~~ shall provide for the regulation of any construction activity, at such a site,  
10 that:

11 **SECTION 20.** 281.33 (4) of the statutes is amended to read:

12 281.33 (4) ~~MODEL ORDINANCES; STATE PLAN; DISTRIBUTION.~~ The department shall  
13 prepare a model zoning ordinance for construction site erosion control ~~at sites where~~  
14 ~~the construction activities do not include the construction of a building~~ and for storm  
15 water management in the form of an administrative rule. The model ordinance is  
16 subject to s. 227.19 and other provisions of ch. 227 in the same manner as other  
17 administrative rules. Following the promulgation of the model ordinance as a rule,  
18 the department shall distribute a copy of the model ordinance to any city, village,  
19 town or county that submits a request. The department shall distribute a copy of the  
20 state plan to any agency which submits a request.

21

(END)

D-Note

**2013-2014 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0226/P2ins.  
RNK:.....

**INSERT ANALYSIS**

X This bill transfers from DSPS to DNR the authority to administer erosion control laws for construction sites of more than one acre in area, regardless of whether the construction activity includes the construction of a building. Under the bill, DSPS retains authority to administer erosion control laws for construction sites that are one acre or less in area and that involve the construction of a commercial building or a one-family or two-family dwelling.

Current law requires DNR to prepare a model zoning ordinance for construction site erosion control at sites over which DNR has erosion control authority and to distribute a copy of the model ordinance to any county, city, village, or town that submits a request. The bill also requires DSPS to prepare and distribute a model zoning ordinance for construction site erosion control at sites over which it has erosion control authority.

Current law requires certain persons who discharge storm water from a discernible, confined, and discrete conveyance to obtain a storm water discharge permit. This bill specifies that this permit requirement applies to conveyances of storm water associated with a construction site, including a construction site where the construction activity includes the construction of a building.

**INSERT 2-15**

- 1           **SECTION 1.** 59.69 (4c) of the statutes is amended to read: ✓
- 2           59.69 (4c) CONSTRUCTION SITE ORDINANCE LIMITS. Except as provided in s.
- 3           101.1206 (5m), an ordinance that is enacted under sub. (4) may only include
- 4           provisions that are related to construction site erosion control if those provisions are
- 5           limited to sites ~~where the construction activities do not include the construction of~~
- 6           a building described in s. 281.33 (3) (a) 1. a. and b. ✓ ✓

**History:** 1971 c. 40 s. 93; 1971 c. 86, 224; 1973 c. 274; 1977 c. 205; 1979 c. 233 ss. 2 to 5, 7 and 8; 1979 c. 323; 1981 c. 341, 354, 374; 1983 a. 192 s. 303 (1); 1983 a. 410; 1983 a. 532 s. 36; 1985 a. 29, 136, 196, 281, 316; 1987 a. 161, 395; 1989 a. 80, 201; 1991 a. 255, 269, 316; 1993 a. 16, 27, 246, 327, 400, 446, 491; 1995 a. 27 ss. 9130 (4), 9126 (19); 1995 a. 201 s. 475; Stats. 1995 s. 59.69; 1995 a. 225 s. 174; 1995 a. 227; 1997 a. 3, 35; 1999 a. 9, 148, 185; 2001 a. 16, 30, 50, 105; 2003 a. 214; 2005 a. 26, 79, 81, 112, 171, 208; 2007 a. 11; 2007 a. 20 ss. 1852 to 1857, 9121 (6) (a); 2009 a. 28, 209, 351, 372, 405; 2011 a. 32, 170; s. 35.17 correction in (10) (e) 1.

INSERT 5-20 1-14

- 7
- 8           **SECTION 2.** 30.025 (1b) (b) of the statutes is amended to read: ✓

1           30.025 (1b) (b) "Permit" means an individual permit, a general permit, an  
2 approval, or a contract required under this subchapter or subch. II, a permit or an  
3 approval required under ch. 31, a storm water discharge permit required under s.  
4 283.33 (1) (a) or (am), or a wetland general permit or wetland individual permit  
5 required under s. 281.36 or under rules promulgated under subch. II of ch. 281 to  
6 implement 33 USC 1341 (a).

History: 1975 c. 68; 1985 a. 332 s. 251 (1); 1997 a. 204; 2003 a. 89, 118; 2009 a. 378, 379; 2011 a. 118, 167.

7           **SECTION 3.** 30.025 (1e) (b) of the statutes is amended to read:

8           30.025 (1e) (b) This section does not apply to a proposal to construct a utility  
9 facility if the only permit that the utility facility is required to obtain from the  
10 department is a storm water discharge permit under s. 283.33 (1) (a) or (am).

History: 1975 c. 68; 1985 a. 332 s. 251 (1); 1997 a. 204; 2003 a. 89, 118; 2009 a. 378, 379; 2011 a. 118, 167.

11           **SECTION 4.** 101.1206 (1) of the statutes is amended to read:

12           101.1206 (1) The department shall establish statewide performance standards  
13 for erosion control at building sites that have an area of one acre or less and that are  
14 for the construction of public buildings, ~~as defined in s. 101.01 (12),~~ and buildings  
15 that are places of employment, ~~as defined in s. 101.01 (11).~~

History: 2011 a. 32 ss. 2331, 2898c to 2905; Stats. 2011 s. 101.1206.

16           **SECTION 5.** 101.1206 (4m) of the statutes is created to read:

17           101.1206 (4m) The department shall prepare a model zoning ordinance for  
18 construction site erosion control at building sites described under sub. (1). The  
19 department shall distribute a copy of the model ordinance to any county, city, village,  
20 or town that submits a request.

History: 1983 a. 416; Stats. 1983 s. 144.265; 1983 a. 538 s. 150; Stats. 1983 s. 144.266; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 31; 1993 a. 16, 246; 1995 a. 27 ss. 4303cm, 9116 (5); 1995 a. 201; 1995 a. 227 s. 434; Stats. 1995 s. 281.33; 2009 a. 28 ss. 2075d to 2075j, 2576n, 2576p; 2011 a. 32.

21           **SECTION 6.** 101.1206 (5m) of the statutes is amended to read:

22           101.1206 (5m) Notwithstanding subs. (1) and (5), a county, city, village, or town  
23 that has in effect on January 1, 1994, an ordinance that establishes standards for



erosion control at building sites for the construction of public buildings and buildings that are places of employment may continue to administer and enforce that ordinance if the standards in the ordinance are more stringent than the performance standards established under sub. (1).

History: 2011 a. 32 ss. 2331, 2898c to 2905; Stats. 2011 s. 101.1206.

**SECTION 7.** 101.1206 (6) of the statutes is amended to read:

101.1206 (6) The department, or a county, city, village, or town to which the department delegates the authority to act under this subsection, may issue a special order directing the immediate cessation of work on a construction site described in sub. (1) until any required plan approval is obtained or until the site complies with performance standards established by rules promulgated under this section.

History: 2011 a. 32 ss. 2331, 2898c to 2905; Stats. 2011 s. 101.1206.

**SECTION 8.** 101.653 (8) of the statutes is created to read:

101.653 (8) INAPPLICABILITY. This section does not apply to a construction site that is more than one acre in area.

INSERT 6-20

**SECTION 9.** 281.33 (3) (a) 1. of the statutes is renumbered 281.33 (3) (a) 1.

(intro.) and amended to read:

281.33 (3) (a) 1. <sup>(Intro.)</sup> Except as restricted under subd. 2., the department shall establish by rule minimum performance standards for activities all of the following:

a. Activities related to construction site erosion control at sites ~~where the construction activities do not include the construction of a building and to storm water management that are more than one acre in area.~~

History: 1983 a. 416; Stats. 1983 s. 144.265; 1983 a. 538 s. 150; Stats. 1983 s. 144.266; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 31; 1993 a. 16, 246; 1995 a. 27 ss. 4303cm, 9116 (5); 1995 a. 201; 1995 a. 227 s. 434; Stats. 1995 s. 281.33; 2009 a. 28 ss. 2075d to 2075j, 2576n, 2576p; 2011 a. 32.

**SECTION 10.** 281.33 (3) (a) 1. b. of the statutes is created to read:

281.33 (3) (a) 1. b. Activities related to construction site erosion control at sites  
to which ss. 101.1206 and 101.653 do not apply.

**SECTION 11.** 281.33 (3) (a) 1. c. of the statutes is created to read:

281.33 (3) (a) 1. c. Storm water management.

**History:** 1983 a. 416; Stats. 1983 s. 144.265; 1983 a. 538 s. 150; Stats. 1983 s. 144.266; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 31; 1993 a. 16, 246; 1995 a. 27 ss. 4303cm, 9116 (5); 1995 a. 201; 1995 a. 227 s. 434; Stats. 1995 s. 281.33; 2009 a. 28 ss. 2075d to 2075j, 2576n, 2576p; 2011 a. 32.

**SECTION 12.** 281.33 (3) (a) 2. of the statutes is amended to read:

281.33 (3) (a) 2. The department, in cooperation with the department of  
transportation, shall establish by rule minimum performance standards for  
activities related to construction site erosion control and storm water management  
if those activities concern street, highway, road or bridge construction, enlargement,  
relocation or reconstruction.

**History:** 1983 a. 416; Stats. 1983 s. 144.265; 1983 a. 538 s. 150; Stats. 1983 s. 144.266; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 31; 1993 a. 16, 246; 1995 a. 27 ss. 4303cm, 9116 (5); 1995 a. 201; 1995 a. 227 s. 434; Stats. 1995 s. 281.33; 2009 a. 28 ss. 2075d to 2075j, 2576n, 2576p; 2011 a. 32.

**SECTION 13.** 281.33 (3) (a) 3. of the statutes is amended to read:

281.33 (3) (a) 3. Minimum performance standards for storm water  
management established under this paragraph are applicable to the state plan  
under sub. (2). The department shall encourage a city, village, town or county to  
comply with minimum performance standards established under this paragraph for  
any construction site erosion control and storm water management zoning ordinance  
enacted under s. 59.693, 60.627, 61.354 or 62.234.

**History:** 1983 a. 416; Stats. 1983 s. 144.265; 1983 a. 538 s. 150; Stats. 1983 s. 144.266; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 31; 1993 a. 16, 246; 1995 a. 27 ss. 4303cm, 9116 (5); 1995 a. 201; 1995 a. 227 s. 434; Stats. 1995 s. 281.33; 2009 a. 28 ss. 2075d to 2075j, 2576n, 2576p; 2011 a. 32.

**SECTION 14.** 281.33 (3) (a) 4. of the statutes is amended to read:

281.33 (3) (a) 4. The department shall identify low-cost practices which would  
enable a person to comply with these minimum performance standards.

**History:** 1983 a. 416; Stats. 1983 s. 144.265; 1983 a. 538 s. 150; Stats. 1983 s. 144.266; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 31; 1993 a. 16, 246; 1995 a. 27 ss. 4303cm, 9116 (5); 1995 a. 201; 1995 a. 227 s. 434; Stats. 1995 s. 281.33; 2009 a. 28 ss. 2075d to 2075j, 2576n, 2576p; 2011 a. 32.

**SECTION 15.** 281.33 (3) (b) (intro.) of the statutes is amended to read:

281.33 (3) (b) (intro.) The minimum performance standards for construction site erosion control at sites ~~where the construction activities do not include the construction of a building described in par. (a) 1. a. and b.~~ shall provide for the regulation of any construction activity, at such a site, that:

History: 1983 a. 416; Stats. 1983 s. 144.265; 1983 a. 538 s. 150; Stats. 1983 s. 144.266; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 31; 1993 a. 16, 246; 1995 a. 27 ss. 4303cm, 9116 (5); 1995 a. 201; 1995 a. 227 s. 434; Stats. 1995 s. 281.33; 2009 a. 28 ss. 2075d to 2075j, 2576n, 2576p; 2011 a. 32.

**SECTION 16.** 281.33 (3) (c) (intro.) of the statutes is amended to read:

281.33 (3) (c) (intro.) The minimum performance standards for storm water management shall provide for the regulation of any construction activity which:

History: 1983 a. 416; Stats. 1983 s. 144.265; 1983 a. 538 s. 150; Stats. 1983 s. 144.266; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 31; 1993 a. 16, 246; 1995 a. 27 ss. 4303cm, 9116 (5); 1995 a. 201; 1995 a. 227 s. 434; Stats. 1995 s. 281.33; 2009 a. 28 ss. 2075d to 2075j, 2576n, 2576p; 2011 a. 32.

**SECTION 17.** 281.33 (4) of the statutes is amended to read:

281.33 (4) MODEL ORDINANCES; STATE PLAN; DISTRIBUTION. The department shall prepare a model zoning ordinance for construction site erosion control at sites ~~where the construction activities do not include the construction of a building described in par. (a) 1. a. and b.~~ and for storm water management ~~in the form of an administrative rule.~~ The model ordinance is subject to s. ~~227.19~~ and other provisions of ch. 227 in the same manner as other administrative rules. Following the promulgation of the model ordinance as a rule, the department shall distribute a copy of the model ordinance to any city, village, town or county that submits a request. The department shall distribute a copy of the state plan to any agency which submits a request.

History: 1983 a. 416; Stats. 1983 s. 144.265; 1983 a. 538 s. 150; Stats. 1983 s. 144.266; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 31; 1993 a. 16, 246; 1995 a. 27 ss. 4303cm, 9116 (5); 1995 a. 201; 1995 a. 227 s. 434; Stats. 1995 s. 281.33; 2009 a. 28 ss. 2075d to 2075j, 2576n, 2576p; 2011 a. 32.

**SECTION 18.** 283.33 (1) (a) of the statutes is amended to read:

283.33 (1) (a) A discharge from a discernible, confined, and discrete conveyance of storm water associated with an industrial activity, ~~including construction~~, that meets criteria in rules promulgated by the department.

History: 1993 a. 16; 1995 a. 227 s. 852, 858; Stats. 1995 s. 283.33; 1997 a. 27; 2001 a. 16.

**SECTION 19.** 283.33 (1) (am) of the statutes is created to read:

283.33 (1) (am) A discharge from a discernible, confined, and discrete conveyance of storm water associated with a construction site, including a construction site where the construction activity includes the construction of a building.

**SECTION 20.** 283.33 (4) (a) (intro.) of the statutes is amended to read:

283.33 (4) (a) (intro.) In addition to obtaining a permit under this section, the owner or operator of an industrial activity described in sub. (1) (a) or (am) that discharges storm water through a municipal separate storm sewer system described in sub. (1) (b) to (cr) shall submit the following information to the owner or operator of the municipal separate storm sewer system:

History: 1993 a. 16; 1995 a. 227 s. 852, 858; Stats. 1995 s. 283.33; 1997 a. 27; 2001 a. 16.

**SECTION 21.** 283.33 (5) of the statutes is amended to read:

283.33 (5) OTHER DISCHARGERS. A person who is required to obtain a permit under sub. (1) (a), (am), or (d) may apply for an individual permit or request coverage under a general permit issued by the department under s. 283.35.

History: 1993 a. 16; 1995 a. 227 s. 852, 858; Stats. 1995 s. 283.33; 1997 a. 27; 2001 a. 16.

**SECTION 22.** 283.33 (7) of the statutes is amended to read:

283.33 (7) PETITIONS. The owner or operator of a municipal separate storm sewer system may petition the department to require a permit under this section for any discharge through the municipal separate storm sewer system. The department may approve the petition only if a permit for the discharge is required under sub. (1) (a), (am), or (d).

History: 1993 a. 16; 1995 a. 227 s. 852, 858; Stats. 1995 s. 283.33; 1997 a. 27; 2001 a. 16.

**SECTION 9138. Nonstatutory provisions; Safety and Professional Services.**

(1) (a) In this subsection:

1. "Dwelling" has the meaning given in section 101.61 (1) of the statutes.

(CS) Construction site erosion control.

2. "Large building site" means the construction site of a public building, a building that is a place of employment, or a one-family or two-family dwelling if the construction site is more than one acre in area.

3. "Place of employment" has the meaning given in section 101.01 (11) of the statutes.

4. "Public building" has the meaning given in section 101.01 (12) of the statutes.

(b) All rules promulgated by the department of safety and professional services under sections 101.1206, 2011 stats., or 101.653, 2011 stats., that relate to erosion control for large building sites and that are in effect on the effective date of this paragraph, as determined by the secretary of administration, remain in effect until their specified expiration dates or until amended or repealed by the department of natural resources. All orders issued by the department of safety and professional services that are in effect on the effective date of this paragraph and that primarily relate to erosion control for large building sites, as determined by the secretary of administration, remain in effect until their specified expiration dates or until modified or rescinded by the department of natural resources.

(c) Any matter pending with the department of safety and professional services on the effective date of this paragraph that primarily relates to its erosion control responsibilities under sections 101.1206, 2011 stats., or 101.653, 2011 stats., for large building sites, as determined by the secretary of administration, is transferred to the department of natural resources and all materials submitted to or actions taken by the department of safety and professional services with respect to the pending matters are considered as having been submitted to or taken by the department of natural resources.

, 2011 stats.)

(d) Any delegation by the department of safety and professional services of its erosion control responsibilities for large building sites to a county, city, village, or town under section 101.1206 or 101.653, 2011 stats., that is in effect on the effective date of this paragraph remains in effect until revoked by the department of natural resources.

fix 1 →

2

3

4

5

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0226/P2dn

RNK: *kyf*

*Date*

*Corey* — *Stinebrink*

*2* Please review this draft very closely to ensure that it is consistent with the intent of your instructions. In particular, please look at the changes that I made in ss. 59.69 (4) (c), 59.693 (2) and (7), 60.627 (2) (a), (4) (c), and (6), 61.354 (2), (4) (c), and (6), and 62.234 (2), (4) (c), and (6). Those provisions, under current law, specify the authority of a county, city, village, or town to enact ordinances with regard to construction site erosion control at sites where the construction activities do not include the construction of a building. I have amended these provisions to specify that this local government authority is limited, instead, to construction site erosion control at sites over which the Department of Natural Resources (DNR) will have authority under this draft. Please confirm that my changes in these provisions reflect the intent of the drafting instructions. *C*

*X* Please note that the language in the draft with regard to stormwater management is different than the language that was proposed in your instructions. I discussed this part of the draft with MaryAnne Lowndes at DNR to better understand the relevant problem. I changed the proposed language after that discussion because I believe it more accurately addresses the issue.

Finally, as we discussed, I did not add language in the statutes relating to DNR's authority over erosion control that is "similar" to s. 101.1206 because I do not understand that instruction. If there is certain authority that the Department of Safety and Professional Services has with regard to erosion control that DNR would also like to have, I will need more specific instructions about what that authority is.

Please give me a call if you have any questions about this version of the draft.

Robin N. Kite  
Senior Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0226/P2dn  
RNK:kjf:jf

January 16, 2013

Corey Stinebrink:

Please review this draft very closely to ensure that it is consistent with the intent of your instructions. In particular, please look at the changes that I made in ss. 59.69 (4c), 59.693 (2) and (7), 60.627 (2) (a), (4) (c), and (6), 61.354 (2), (4) (c), and (6), and 62.234 (2), (4) (c), and (6). Those provisions, under current law, specify the authority of a county, city, village, or town to enact ordinances with regard to construction site erosion control at sites where the construction activities do not include the construction of a building. I have amended these provisions to specify that this local government authority is limited, instead, to construction site erosion control at sites over which the Department of Natural Resources (DNR) will have authority under this draft. Please confirm that my changes in these provisions reflect the intent of the drafting instructions.

Please note that the language in the draft with regard to storm water management is different than the language that was proposed in your instructions. I discussed this part of the draft with MaryAnne Lowndes at DNR to better understand the relevant problem. I changed the proposed language after that discussion because I believe it more accurately addresses the issue.

Finally, as we discussed, I did not add language in the statutes relating to DNR's authority over erosion control that is "similar" to s. 101.1206 because I do not understand that instruction. If there is certain authority that the Department of Safety and Professional Services has with regard to erosion control that DNR would also like to have, I will need more specific instructions about what that authority is.

Please give me a call if you have any questions about this version of the draft.

Robin N. Kite  
Senior Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.wisconsin.gov



General comment:

The changes pertaining to municipal authority in sections 3 through 14 appear to take away a municipality's ability to regulate a smaller construction site with no building.

Sections 15, page 6, line 2 – Change “that have an area of one acre or less” to “not regulated under rules promulgated by the department of natural resources under s. 283.33 (1) (am)”.

Section 20, page 7, line 5 – Change “more than one acre in area” to “regulated under rules promulgated by the department of natural resources under s. 283.33 (1) (am)”.

Section 21, page 7, line 13 – Change “more than one acre in area” to “regulated under s. 283.33 (1) (am)”.

Section 31, page 9, change to read:

283.33 (1) (am) A discharge of storm water associated with a construction site, including a construction site where the construction activity includes the construction of a building, that meets criteria in rules promulgated by the department.

Section 9138, page 10, line 10 - Change “is more than one acre” to “will disturb one or more acre”.

Create a new section as follows

281.33 (3) (a) 5. of the statutes is created to read:

281.33 (3) (a) 5. Performance standards created by the department under s. 281.16 (2) shall satisfy the minimum performance standards required under this subsection.

Non-statutory language

Robin's comments: I don't think the WDNR wants to take on the workload of rescinding DSPS rules, and take on all pending matters before DSPS for large building sites ( they have all of the witnesses) or revoke their delegation authority to local governmental units. WOW. Anyway, wouldn't we prefer: DSPS rescind its own rules or the statute just sets a sunset date. For pending matters, DSPS needs to finish those because their staff have personal knowledge and witnesses. As for rescinding delegation – either DSPS rescind the delegation or the statute simply specifies that the delegation is rescinded....but I am not sure what it means to “rescind” delegation. Don't we want local governmental units to continue doing what they have been doing.

Russ's comments: I read the language regarding the DSPS rules to read that they remain in effect until DNR rescinds or modifies them. I like it that it is our choice and that we can determine if it is a priority or not to undertake the workload. If we are relatively happy with the DSPS rules, we can just leave them in place for now – and just rescind them at the time we are

one acre or more  
in land  
disturbance

preparing to revise our related rules. I agree with the comment regarding pending matters and rescinding delegation.

Jim and Mary Anne's comments: The DNR has its own rules and standards, and does not need any holdover from DSPS. This has already resulted in a lot of confusion that this legislative fix is intended to address. We would prefer that the applicability of any DSPS rules that previously applied to sites that the DNR now has authority over would sunset. Additionally, the DNR should not be put into a position to revoke DSPS delegation to municipalities for sites the DNR would now regulate. We have no ability to manage delegation and cannot delegate permitting as far as EPA is concerned. We also agree that pending matters should not transfer. Finally, there is still a lack of resolution of the issue that NR 216 still has applicability language pertaining to commercial buildings and one and two family dwelling [ss. 216.42 (40 and (9))]. Section 283.33 still refers to rules promulgated by the DNR, so perhaps to fix this some additional non-statutory language could be added:

"Notwithstanding rules promulgated by the department of natural resources pursuant to s. 283.33 prior to the effective date of this section, a discharge of storm water associated with a construction site that includes the construction of a building where one or more acre will be disturbed requires a storm water discharge permit issued by the department of natural resources."

Jim B @ DNR:

wants model ordinance - doesn't  
want to take years to do it -  
take it or leave it -

## Kite, Robin

---

**From:** Stinebrink, Cory R - DOA <Cory.Stinebrink@wisconsin.gov>  
**Sent:** Thursday, January 31, 2013 10:49 AM  
**To:** Kite, Robin  
**Subject:** RE: Plain language description of stat. change modification

Yes, feel free. I am OK with you talking to anyone.

-----Original Message-----

From: Kite, Robin [<mailto:Robin.Kite@legis.wisconsin.gov>]  
Sent: Thursday, January 31, 2013 10:25 AM  
To: Stinebrink, Cory R - DOA  
Subject: RE: Plain language description of stat. change modification

Mary Anne is out of the office all day. I can try Jim Bertolacini if that is okay with you.

-----Original Message-----

From: Stinebrink, Cory R - DOA [<mailto:Cory.Stinebrink@wisconsin.gov>]  
Sent: Thursday, January 31, 2013 10:12 AM  
To: Kite, Robin  
Subject: RE: Plain language description of stat. change modification

I actually thought the issue was more moot because I thought we were not doing anything with performance standards language. Feel free to call Mary Anne Lowndes. I can't make sense of most of what they've sent me the last 24 hours, so it's probably best to go straight to the source then give me a call and we can talk through it.

-----Original Message-----

From: Kite, Robin [<mailto:Robin.Kite@legis.wisconsin.gov>]  
Sent: Thursday, January 31, 2013 10:09 AM  
To: Stinebrink, Cory R - DOA  
Subject: RE: Plain language description of stat. change modification

I still don't understand this. Current law says in s. 281.31 (3) (a) that the "department shall establish by rule minimum standards....".

If standards under s. 281.16 (2) are to apply instead, and they don't want to promulgate rules as provided under s. 281.31 (3), then I would need to repeal s. 281.31 (3). I don't think they want this, or do they?

I just can't tell from these comments. If the rules already promulgated under s. 281.31 already apply to erosion control and storm water management, it makes no sense to me to add a sentence saying this in s.

281.33. Either DNR is required to promulgate rules under s. 281.31 or it isn't. Do they want me to repeal s. 281.31 (3)? Again, I would be happy to discuss this directly with the appropriate person at DNR if you want me to.

Robin

-----Original Message-----

From: Stinebrink, Cory R - DOA [<mailto:Cory.Stinebrink@wisconsin.gov>]  
Sent: Thursday, January 31, 2013 9:51 AM  
To: Kite, Robin  
Subject: FW: Plain language description of stat. change modification

I don't know if this gives any amount of added insight or not. I suspect it is a bit moot considering our discussion yesterday. But, I wanted to send it your way anyway because I try to share all comments with you on drafts.

-----Original Message-----

From: Neumann, Paul F - DNR  
Sent: Thursday, January 31, 2013 9:27 AM  
To: Stinebrink, Cory R - DOA  
Cc: Lowndes, MaryAnne - DNR  
Subject: FW: Plain language description of stat. change modification

Hi Cory,

Please see email below from Mary Anne Lowndes. Does it help to clarify what our intent is with that language?

-----Original Message-----

From: Lowndes, MaryAnne - DNR  
Sent: Wednesday, January 30, 2013 4:20 PM  
To: Nyffeler, Robin T - DNR; Neumann, Paul F - DNR; Bertolacini, Jim K - DNR  
Subject: RE: Plain language description of our intent with this...

What we were trying to say is that as required under 281.16 we already have performance standards that apply to erosion control and storm water management and we don't need to create new ones. Therefore, those performance standards in NR 151 and referenced in NR 216 shall satisfy this requirement.

Mary Anne Lowndes  
Runoff Management Section Chief- WT/3  
Bureau of Watershed Management  
Wisconsin Department of Natural Resources  
101 S. Webster, P. O. Box 7921  
Madison, WI 53707-7921  
(\*) phone: (608) 261-6420  
(\*) fax: (608) 267-2800  
(\*) e-mail: [MaryAnne.Lowndes@wisconsin.gov](mailto:MaryAnne.Lowndes@wisconsin.gov)

---

From: Neumann, Paul F - DNR  
Sent: Wednesday, January 30, 2013 3:21 PM  
To: Lowndes, MaryAnne - DNR; Bertolacini, Jim K - DNR  
Cc: Nyffeler, Robin T - DNR  
Subject: Plain language description of our intent with this...

Cory just called me on this one....Could you give me a one or two sentence layperson description of our intent with this recommendation?

Create a new section as follows

281.33 (3) (a) 5. of the statutes is created to read:

281.33 (3) (a) 5. Performance standards created by the department under s. 281.16 (2) shall satisfy the minimum performance standards required under this subsection.

Telephone conferences with Jim Bertolacini a DNR on 1/31/13 and 2/1/13 and instructions from Cory Stinebrink at DOA based on my discussions with Jim:

1. DNR needs authority for erosion control where there is one acre or more of land disturbance. (per Cory-include in draft)
2. If the rules promulgated under s. 281.16 (2) satisfy the rule-making requirement under s. 283.33 (3), DNR does not have to promulgate rules again under s. 283.33 (3). (per Cory-include in draft)
3. DNR wants to be able to prepare a model ordinance that the local governments can use at their discretion but doesn't want to have to promulgate rules about this (per Cory-do not include this)
4. Make sure that the language in the local government chapters does not change as it concerns DSPS's authority under the draft. (per Cory-include this)
5. Do not transfer any pending matters from DSPS to DNR; make clear that DSPS matters that are pending on the effective date of the bill stay with DSPS (per Cory-include this)